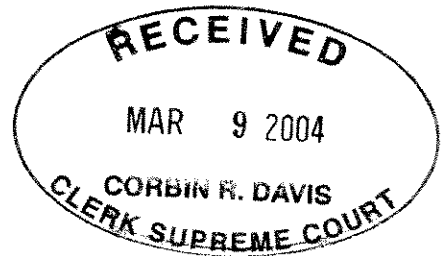


Randy E. Davidson
3300 Penobscot Building
Detroit, MI 48226

March 5, 2004

Mr. Corbin R. Davis, Clerk
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

Re: ADM File No. 2003-04
Proposed MCR 6.414(E) – Juror Questions



Dear Mr. Davis:

The Court should *not* adopt proposed MCR 6.414(E), which would permit jurors in criminal cases to ask questions of witnesses.

This Court has previously permitted trial courts to screen and ask juror questions of witnesses during trial. See, e.g., *People v Heard*, 388 Mich 182 (1972). However, a defendant has a due process right under US Const, Am XIV, to trial by a fair and impartial jury. *Groppi v Wisconsin*, 400 US 505; 91 S Ct 490; 27 L Ed 2d 571 (1971). While there is a split of authority, the Minnesota Supreme Court recently banned juror questions of witnesses in criminal cases. *State v Costello*, 646 NW2d 204 (Minn, 2002). That court recognized two significant problems with permitting juror questions:

In sum, our concern about allowing jurors to question witnesses is two-fold. First, the opportunity to pose questions may prevent jurors from keeping an open mind until all of the evidence has been presented. Second, the opportunity to pose questions may upset the burden of production and persuasion in a criminal trial. We believe the passive-juror system minimizes these problems because jurors are (1) not enticed to form hypotheses or judgments about missing testimony; and are (2) prevented from affecting the production of evidence [*Id*, p 213].

The present court rules and jury instructions adequately address the problem of clarifying confusing evidence. MRE 614(b) provides "The *court* may interrogate witness, whether called by itself or by a party" (emphasis added). See also, CJI2d 2.8: "I may ask some of the witnesses questions myself. These questions are not meant to reflect my opinion about the evidence. If I ask questions, my only reason would be to ask about things that may not have been fully explored."

Especially in criminal cases where liberty interests are at stake, this Court must take every precaution to safeguard the right to a fair and impartial trial.

Sincerely,

Randy E. Davidson

cc: James R. Neuhard
Norris J. Thomas, Jr.